

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1313

Introduced by Senator Kuehl

February 17, 2004

An act to amend Sections 11165.1, 11165.3, 11165.5, 11165.6, 11165.7, 11165.12, 11166, 11166.05, 11166, 11166.05, 11167, 11167.5, 11170, 11170.5, and 11172 of, to amend and renumber Sections 11166.7, 11166.8, 11166.9, 11166.95, and 11174.4 of, to add an article heading immediately preceding Section 11174.32 to Chapter 2 of Title 1 of Part 4 of, and to repeal Section 11170.6 of, the Penal Code, and to amend Section 16513 of the Welfare and Institutions Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1313, as amended, Kuehl. Child abuse reporting.

(1) Existing law, the Child Abuse and Neglect Reporting Act (CANRA), requires specified persons to report to a specified agency whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

This bill would specify that, as used in regard to these provisions, reportable "sexual assault" does not include certain consensual acts between two persons who are both under 18 years of age.

(2) Existing law defines willful cruelty or unjustifiable punishment of a child for purposes of these provisions as a situation in which any person willfully causes or permits a child to suffer, or inflicts

thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.

This bill would define the willful harming or injuring of a child or the endangering of the person or health of a child, for purposes of these provisions.

(3) Existing law identifies those persons who are mandated reporters for purposes of these provisions.

This bill would specify that volunteers of public and private organizations whose duties include direct contact with and supervision of children are not mandated reporters but are encouraged to report instances of child abuse and neglect.

(4) Existing law outlines the substance of training with regard to the duties imposed by these provisions but provides that a mandated reporter who does not receive this training shall not be excused from his or her duty as a mandated reporter.

This bill would provide that employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed upon them by these provisions. This bill would also provide that public and private organizations are encouraged to provide their volunteers whose duties include direct contact with and supervision of children with training in identifying and reporting child abuse and neglect.

(5) Existing law requires law enforcement agencies that received reports of child abuse and neglect from mandated reporters to forward to the Department of Justice a report of every case it investigates which is determined not to be unfounded.

This bill would change the definition of ‘substantiated report’ for the purposes of these provisions to a report that is determined to constitute child abuse or neglect based upon evidence that makes it more likely than not that child abuse or neglect occurred.

(6) Existing law requires a mandated reporter to make a report whenever he or she in his or her professional capacity or within the scope of his or her employment he or she has knowledge of or observes a child whom he or she knows or reasonably suspects has been the victim of child abuse or neglect.

This bill would specify that a mandated reporter shall not make a report of child abuse or neglect solely on the basis that an adult was the victim of neglect or abuse as a child.



(7) Existing law requires the reports filed by mandated reporters concerning abuse and neglect to include certain specified information about the victim and the information that gave rise to the suspicion of abuse and its source.

This bill would provide that a mandated reporter is not required to make a report if identifying information about the victim is not known to him or her.

(8) Existing law requires a mandated reporter to make a report if he or she knows or reasonably suspects that unjustifiable mental suffering has been inflicted upon a child. Existing law also provides that a mandated reporter may report whenever he or she has knowledge of or reasonably suspects that mental suffering has been inflicted upon a child or his or her emotional well-being is endangered.

This bill would instead provide that a mandated reporter may make a report if he or she has knowledge of or ~~reasonable~~ *reasonably* suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage.

(9) Existing law provides that mandated reports and information maintained by the Department of Justice in the Child Abuse Central Index are confidential and may be disclosed only under certain circumstances.

This bill would specify that a report by a mandated reporter is confidential and any violation of this confidentiality is punishable by a fine not to exceed \$500, imprisonment in a county jail for a period not to exceed 6 months, or by both that fine and imprisonment. This bill would clarify that a child abuse or neglect investigative report that results in a summary report being filed with the Department of Justice is confidential and may only be disclosed as specified.

This bill would provide that information in the Child Abuse Central Index maintained by the Department of Justice may be disclosed to a specified agency that is conducting a child abuse investigation relevant to information contained in the index and to a government agency that is conducting a background investigation of an applicant for a position as a peace officer regarding information concerning the applicant.

(10) Existing law provides that no mandated reporter shall be civilly or criminally liable for any report authorized by these provisions.

This bill would specify that this immunity applies even if the mandated reporter acquires the knowledge or reasonable suspicion of child abuse or neglect outside of his or her professional capacity or outside the scope of his or her employment.



This bill would make numerous other technical, nonsubstantive, and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11165.1 of the Penal Code is amended
2 to read:

3 11165.1. As used in this article, “sexual abuse” means sexual
4 assault or sexual exploitation as defined by the following:

5 (a) “Sexual assault” means conduct in violation of one or more
6 of the following sections: Section 261 (rape), subdivision (d) of
7 Section 261.5 (statutory rape), 264.1 (rape in concert), 285
8 (incest), subdivision (a) or (b), or paragraph (1) of subdivision (c)
9 of Section 288 (lewd or lascivious acts upon a child), or 647.6
10 (child molestation). “Sexual assault” also means conduct in
11 violation of one or more of the following sections: Section 286
12 (sodomy), with the exception of paragraph (1) of subdivision (b);
13 Section 288a (oral copulation), with the exception of paragraph (1)
14 of subdivision (b); or Section 289 (sexual penetration), with the
15 exception of subdivision (h).

16 (b) Conduct described as “sexual assault” includes, but is not
17 limited to, all of the following:

18 (1) Any penetration, however slight, of the vagina or anal
19 opening of one person by the penis of another person, whether or
20 not there is the emission of semen.

21 (2) Any sexual contact between the genitals or anal opening of
22 one person and the mouth or tongue of another person.

23 (3) Any intrusion by one person into the genitals or anal
24 opening of another person, including the use of any object for this
25 purpose, except that, it does not include acts performed for a valid
26 medical purpose.

27 (4) The intentional touching of the genitals or intimate parts
28 (including the breasts, genital area, groin, inner thighs, and
29 buttocks) or the clothing covering them, of a child, or of the
30 perpetrator by a child, for purposes of sexual arousal or
31 gratification, except that, it does not include acts which may
32 reasonably be construed to be normal caretaker responsibilities;



1 interactions with, or demonstrations of affection for, the child; or
2 acts performed for a valid medical purpose.

3 (5) The intentional masturbation of the perpetrator's genitals in
4 the presence of a child.

5 (c) "Sexual exploitation" refers to any of the following:

6 (1) Conduct involving matter depicting a minor engaged in
7 obscene acts in violation of Section 311.2 (preparing, selling, or
8 distributing obscene matter) or subdivision (a) of Section 311.4
9 (employment of minor to perform obscene acts).

10 (2) Any person who knowingly promotes, aids, or assists,
11 employs, uses, persuades, induces, or coerces a child, or any
12 person responsible for a child's welfare, who knowingly permits
13 or encourages a child to engage in, or assist others to engage in,
14 prostitution or a live performance involving obscene sexual
15 conduct, or to either pose or model alone or with others for
16 purposes of preparing a film, photograph, negative, slide,
17 drawing, painting, or other pictorial depiction, involving obscene
18 sexual conduct. For the purpose of this section, "person
19 responsible for a child's welfare" means a parent, guardian, foster
20 parent, or a licensed administrator or employee of a public or
21 private residential home, residential school, or other residential
22 institution.

23 (3) Any person who depicts a child in, or who knowingly
24 develops, duplicates, prints, or exchanges, any film, photograph,
25 videotape, negative, or slide in which a child is engaged in an act
26 of obscene sexual conduct, except for those activities by law
27 enforcement and prosecution agencies and other persons
28 described in subdivisions (c) and (e) of Section 311.3.

29 SEC. 2. Section 11165.3 of the Penal Code is amended to
30 read:

31 11165.3. As used in this article, "the willful harming or
32 injuring of a child or the endangering of the person or health of a
33 child," means a situation in which any person willfully causes or
34 permits any child to suffer, or inflicts thereon, unjustifiable
35 physical pain or mental suffering, or having the care or custody of
36 any child, willfully causes or permits the person or health of the
37 child to be placed in a situation such that his or her person or health
38 is endangered.

39 SEC. 3. Section 11165.5 of the Penal Code is amended to
40 read:

1 11165.5. As used in this article, the term “abuse or neglect in
2 out-of-home care” includes physical injury inflicted upon a child
3 by another person by other than accidental means, sexual abuse as
4 defined in Section 11165.1, neglect as defined in Section 11165.2,
5 unlawful corporal punishment or injury as defined in Section
6 11165.4, or the willful harming or injuring of a child or the
7 endangering of the person or health of a child, as defined in Section
8 11165.3, where the person responsible for the child’s welfare is a
9 licensee, administrator, or employee of any facility licensed to care
10 for children, or an administrator or employee of a public or private
11 school or other institution or agency. “Abuse or neglect in
12 out-of-home care” does not include an injury caused by
13 reasonable and necessary force used by a peace officer acting
14 within the course and scope of his or her employment as a peace
15 officer.

16 SEC. 4. Section 11165.6 of the Penal Code is amended to
17 read:

18 11165.6. As used in this article, the term “child abuse or
19 neglect” includes physical injury inflicted by other than accidental
20 means upon a child by another person, sexual abuse as defined in
21 Section 11165.1, neglect as defined in Section 11165.2, the willful
22 harming or injuring of a child or the endangering of the person or
23 health of a child, as defined in Section 11165.3, and unlawful
24 corporal punishment or injury as defined in Section 11165.4.
25 “Child abuse or neglect” does not include a mutual affray between
26 minors. “Child abuse or neglect” does not include an injury
27 caused by reasonable and necessary force used by a peace officer
28 acting within the course and scope of his or her employment as a
29 peace officer.

30 SEC. 5. Section 11165.7 of the Penal Code is amended to
31 read:

32 11165.7. (a) As used in this article, “mandated reporter” is
33 defined as any of the following:

34 (1) A teacher.

35 (2) An instructional aide.

36 (3) A teacher’s aide or teacher’s assistant employed by any
37 public or private school.

38 (4) A classified employee of any public school.

1 (5) An administrative officer or supervisor of child welfare and
2 attendance, or a certificated pupil personnel employee of any
3 public or private school.

4 (6) An administrator of a public or private day camp.

5 (7) An administrator or employee of a public or private youth
6 center, youth recreation program, or youth organization.

7 (8) An administrator or employee of a public or private
8 organization whose duties require direct contact and supervision
9 of children.

10 (9) Any employee of a county office of education or the
11 California Department of Education, whose duties bring the
12 employee into contact with children on a regular basis.

13 (10) A licensee, an administrator, or an employee of a licensed
14 community care or child day care facility.

15 (11) A ~~headstart~~ *Head Start Program* teacher.

16 (12) A licensing worker or licensing evaluator employed by a
17 licensing agency as defined in Section 11165.11.

18 (13) A public assistance worker.

19 (14) An employee of a child care institution, including, but not
20 limited to, foster parents, group home personnel, and personnel of
21 residential care facilities.

22 (15) A social worker, probation officer, or parole officer.

23 (16) An employee of a school district police or security
24 department.

25 (17) Any person who is an administrator or presenter of, or a
26 counselor in, a child abuse prevention program in any public or
27 private school.

28 (18) A district attorney investigator, inspector, or local child
29 support agency caseworker unless the investigator, inspector, or
30 caseworker is working with an attorney appointed pursuant to
31 Section 317 of the Welfare and Institutions Code to represent a
32 minor.

33 (19) A peace officer, as defined in Chapter 4.5 (commencing
34 with Section 830) of Title 3 of Part 2, who is not otherwise
35 described in this section.

36 (20) A firefighter, except for volunteer firefighters.

37 (21) A physician, surgeon, psychiatrist, psychologist, dentist,
38 resident, intern, podiatrist, chiropractor, licensed nurse, dental
39 hygienist, optometrist, marriage, family and child counselor,
40 clinical social worker, or any other person who is currently

1 licensed under Division 2 (commencing with Section 500) of the
2 Business and Professions Code.

3 (22) Any emergency medical technician I or II, paramedic, or
4 other person certified pursuant to Division 2.5 (commencing with
5 Section 1797) of the Health and Safety Code.

6 (23) A psychological assistant registered pursuant to Section
7 2913 of the Business and Professions Code.

8 (24) A marriage, family, and child therapist trainee, as defined
9 in subdivision (c) of Section 4980.03 of the Business and
10 Professions Code.

11 (25) An unlicensed marriage, family, and child therapist intern
12 registered under Section 4980.44 of the Business and Professions
13 Code.

14 (26) A state or county public health employee who treats a
15 minor for venereal disease or any other condition.

16 (27) A coroner.

17 (28) A medical examiner, or any other person who performs
18 autopsies.

19 (29) A commercial film and photographic print processor, as
20 specified in subdivision (e) of Section 11166. As used in this
21 article, “commercial film and photographic print processor”
22 means any person who develops exposed photographic film into
23 negatives, slides, or prints, or who makes prints from negatives or
24 slides, for compensation. The term includes any employee of such
25 a person; it does not include a person who develops film or makes
26 prints for a public agency.

27 (30) A child visitation monitor. As used in this article, “child
28 visitation monitor” means any person who, for financial
29 compensation, acts as monitor of a visit between a child and any
30 other person when the monitoring of that visit has been ordered by
31 a court of law.

32 (31) An animal control officer or humane society officer. For
33 the purposes of this article, the following terms have the following
34 meanings:

35 (A) “Animal control officer” means any person employed by
36 a city, county, or city and county for the purpose of enforcing
37 animal control laws or regulations.

38 (B) “Humane society officer” means any person appointed or
39 employed by a public or private entity as a humane officer who is



1 qualified pursuant to Section 14502 or 14503 of the Corporations
2 Code.

3 (32) A clergy member, as specified in subdivision (c) of
4 Section 11166. As used in this article, “clergy member” means a
5 priest, minister, rabbi, religious practitioner, or similar
6 functionary of a church, temple, or recognized denomination or
7 organization.

8 (33) Any custodian of records of a clergy member, as specified
9 in this section and subdivision (c) of Section 11166.

10 (34) Any employee of any police department, county sheriff’s
11 department, county probation department, or county welfare
12 department.

13 (35) An employee or volunteer of a Court Appointed Special
14 Advocate program, as defined in Rule 1424 of the *California* rules
15 of court.

16 (36) A custodial officer as defined in Section 831.5.

17 (b) Except as provided in paragraph (35) of subdivision (a),
18 volunteers of public or private organizations whose duties require
19 direct contact with and supervision of children are not mandated
20 reporters but are encouraged to obtain training in the identification
21 and reporting of child abuse and neglect and are further
22 encouraged to report known or suspected instances of child abuse
23 or neglect to an agency specified in Section 11165.9.

24 (c) Employers are strongly encouraged to provide their
25 employees who are mandated reporters with training in the duties
26 imposed by this article. This training shall include training in child
27 abuse and neglect identification and training in child abuse and
28 neglect reporting. As part of that training, employers shall provide
29 to all employees being trained a written copy of the reporting
30 requirements and a written disclosure of the employees’
31 confidentiality rights.

32 (d) School districts that do not train their employees specified
33 in subdivision (a) in the duties of mandated reporters under the
34 child abuse reporting laws shall report to the State Department of
35 Education the reasons why this training is not provided.

36 (e) The absence of training shall not excuse a mandated
37 reporter from the duties imposed by this article.

38 (f) Public and private organizations are encouraged to provide
39 their volunteers whose duties require direct contact with and

1 supervision of children with training in the identification and
2 reporting of child abuse and neglect.

3 SEC. 6. Section 11165.12 of the Penal Code is amended to
4 read:

5 11165.12. As used in this article, the following definitions
6 shall control:

7 (a) “Unfounded report” means a report that is determined by
8 the investigator who conducted the investigation to be false, to be
9 inherently improbable, to involve an accidental injury, or not to
10 constitute child abuse or neglect, as defined in Section 11165.6.

11 (b) “Substantiated report” means a report that is determined by
12 the investigator who conducted the investigation to constitute
13 child abuse or neglect, as defined in Section 11165.6, based upon
14 evidence that makes it more likely than not that child abuse or
15 neglect, as defined, occurred.

16 (c) “Inconclusive report” means a report that is determined by
17 the investigator who conducted the investigation not to be
18 unfounded, but the findings are inconclusive and there is
19 insufficient evidence to determine whether child abuse or neglect,
20 as defined in Section 11165.6, has occurred.

21 SEC. 7. Section 11166 of the Penal Code is amended to read:

22 11166. (a) Except as provided in subdivision (c), a mandated
23 reporter shall make a report to an agency specified in Section
24 11165.9 whenever the mandated reporter, in his or her professional
25 capacity or within the scope of his or her employment, has
26 knowledge of or observes a child whom the mandated reporter
27 knows or reasonably suspects has been the victim of child abuse
28 or neglect. The mandated reporter shall make a report to the
29 agency immediately or as soon as is practicably possible by
30 telephone, and the mandated reporter shall prepare and send a
31 written report thereof within 36 hours of receiving the information
32 concerning the incident. The mandated reporter may include with
33 the report any nonprivileged documentary evidence the mandated
34 reporter possesses relating to the incident.

35 (1) For the purposes of this article, “reasonable suspicion”
36 means that it is objectively reasonable for a person to entertain a
37 suspicion, based upon facts that could cause a reasonable person
38 in a like position, drawing, when appropriate, on his or her training
39 and experience, to suspect child abuse or neglect. For the purpose



1 of this article, the pregnancy of a minor does not, in and of itself,
2 constitute a basis for a reasonable suspicion of sexual abuse.

3 (2) The agency shall be notified and a report shall be prepared
4 and sent even if the child has expired, regardless of whether or not
5 the possible abuse was a factor contributing to the death, and even
6 if suspected child abuse was discovered during an autopsy.

7 (3) A mandated reporter shall not make a report solely on the
8 basis that he or she has knowledge of or suspects that an adult was
9 the victim of abuse or neglect as a child.

10 (4) A report made by a mandated reporter pursuant to this
11 section shall be known as a mandated report.

12 (b) Any mandated reporter who fails to report an incident of
13 known or reasonably suspected child abuse or neglect as required
14 by this section is guilty of a misdemeanor punishable by up to six
15 months confinement in a county jail or by a fine of one thousand
16 dollars (\$1,000) or by both that *imprisonment and fine*—~~and~~
17 ~~punishment.~~

18 (c) (1) A clergy member who acquires knowledge or a
19 reasonable suspicion of child abuse or neglect during a penitential
20 communication is not subject to subdivision (a). For the purposes
21 of this subdivision, “penitential communication” means a
22 communication, intended to be in confidence, including, but not
23 limited to, a sacramental confession, made to a clergy member
24 who, in the course of the discipline or practice of his or her church,
25 denomination, or organization, is authorized or accustomed to
26 hear those communications, and under the discipline, tenets,
27 customs, or practices of his or her church, denomination, or
28 organization, has a duty to keep those communications secret.

29 (2) Nothing in this subdivision shall be construed to modify or
30 limit a clergy member’s duty to report known or suspected child
31 abuse or neglect when the clergy member is acting in some other
32 capacity that would otherwise make the clergy member a
33 mandated reporter.

34 (3) (A) On or before January 1, 2004, a clergy member or any
35 custodian of records for the clergy member may report to an
36 agency specified in Section 11165.9 that the clergy member or any
37 custodian of records for the clergy member, prior to January 1,
38 1997, in his or her professional capacity or within the scope of his
39 or her employment, other than during a penitential
40 communication, acquired knowledge or had a reasonable

1 suspicion that a child had been the victim of sexual abuse that the
2 clergy member or any custodian of records for the clergy member
3 did not previously report the abuse to an agency specified in
4 Section 11165.9. The provisions of Section 11172 shall apply to all
5 reports made pursuant to this paragraph.

6 (B) This paragraph shall apply even if the victim of the known
7 or suspected abuse has reached the age of majority by the time the
8 required report is made.

9 (C) The local law enforcement agency shall have jurisdiction
10 to investigate any report of child abuse made pursuant to this
11 paragraph even if the report is made after the victim has reached
12 the age of majority.

13 (d) Any commercial film and photographic print processor
14 who has knowledge of or observes, within the scope of his or her
15 professional capacity or employment, any film, photograph,
16 videotape, negative, or slide depicting a child under the age of 16
17 years engaged in an act of sexual conduct, shall report the instance
18 of suspected child abuse to the law enforcement agency having
19 jurisdiction over the case immediately, or as soon as practically
20 possible, by telephone, and shall prepare and send a written report
21 of it with a copy of the film, photograph, videotape, negative, or
22 slide attached within 36 hours of receiving the information
23 concerning the incident. As used in this subdivision, “sexual
24 conduct” means any of the following:

25 (1) Sexual intercourse, including genital-genital, oral-genital,
26 anal-genital, or oral-anal, whether between persons of the same or
27 opposite sex or between humans and animals.

28 (2) Penetration of the vagina or rectum by any object.

29 (3) Masturbation for the purpose of sexual stimulation of the
30 viewer.

31 (4) Sadomasochistic abuse for the purpose of sexual
32 stimulation of the viewer.

33 (5) Exhibition of the genitals, pubic, or rectal areas of any
34 person for the purpose of sexual stimulation of the viewer.

35 (e) Any mandated reporter who knows or reasonably suspects
36 that the home or institution in which a child resides is unsuitable
37 for the child because of abuse or neglect of the child shall bring the
38 condition to the attention of the agency to which, and at the same
39 time as, he or she makes a report of the abuse or neglect pursuant
40 to subdivision (a).

(f) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(g) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(h) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(i) A county probation or welfare department shall immediately, or as soon as practically possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported

1 only to the county welfare or probation department. A county
2 probation or welfare department also shall send, fax, or
3 electronically transmit a written report thereof within 36 hours of
4 receiving the information concerning the incident to any agency
5 to which it makes a telephone report under this subdivision.

6 (j) A law enforcement agency shall immediately, or as soon as
7 practically possible, report by telephone to the agency given
8 responsibility for investigation of cases under Section 300 of the
9 Welfare and Institutions Code and to the district attorney's office
10 every known or suspected instance of child abuse or neglect
11 reported to it, except acts or omissions coming within subdivision
12 (b) of Section 11165.2, which shall be reported only to the county
13 welfare or probation department. A law enforcement agency shall
14 report to the county welfare or probation department every known
15 or suspected instance of child abuse or neglect reported to it which
16 is alleged to have occurred as a result of the action of a person
17 responsible for the child's welfare, or as the result of the failure of
18 a person responsible for the child's welfare to adequately protect
19 the minor from abuse when the person responsible for the child's
20 welfare knew or reasonably should have known that the minor was
21 in danger of abuse. A law enforcement agency also shall send, fax,
22 or electronically transmit a written report thereof within 36 hours
23 of receiving the information concerning the incident to any agency
24 to which it makes a telephone report under this subdivision.

25 SEC. 8. Section 11166.05 of the Penal Code is amended to
26 read:

27 11166.05. Any mandated reporter who has knowledge of or
28 who reasonably suspects that a child is suffering serious emotional
29 damage or is at a substantial risk of suffering serious emotional
30 damage, evidenced by severe anxiety, depression, withdrawal, or
31 untoward aggressive behavior toward self or other, as a result of
32 the conduct of a parent or guardian may make a report to an agency
33 specified in Section 11165.9.

34 SEC. 9. Section 11166.7 of the Penal Code is amended and
35 renumbered to read:

36 11174.32. (a) Each county may establish an interagency
37 child death team to assist local agencies in identifying and
38 reviewing suspicious child deaths and facilitating communication
39 among persons who perform autopsies and the various persons and
40 agencies involved in child abuse or neglect cases. Interagency



1 child death teams have been used successfully to ensure that
2 incidents of child abuse or neglect are recognized and other
3 siblings and nonoffending family members receive the appropriate
4 services in cases where a child has expired.

5 (b) Each county may develop a protocol that may be used as a
6 guideline by persons performing autopsies on children to assist
7 coroners and other persons who perform autopsies in the
8 identification of child abuse or neglect, in the determination of
9 whether child abuse or neglect contributed to death or whether
10 child abuse or neglect had occurred prior to but was not the actual
11 cause of death, and in the proper written reporting procedures for
12 child abuse or neglect, including the designation of the cause and
13 mode of death.

14 (c) In developing an interagency child death team and an
15 autopsy protocol, each county, working in consultation with local
16 members of the California State Coroner's Association and county
17 child abuse prevention coordinating councils, may solicit
18 suggestions and final comments from persons, including, but not
19 limited to, the following:

- 20 (1) Experts in the field of forensic pathology.
- 21 (2) Pediatricians with expertise in child abuse.
- 22 (3) Coroners and medical examiners.
- 23 (4) Criminologists.
- 24 (5) District attorneys.
- 25 (6) Child protective services staff.
- 26 (7) Law enforcement personnel.
- 27 (8) Representatives of local agencies which are involved with
28 child abuse or neglect reporting.
- 29 (9) County health department staff who deals with children's
30 health issues.
- 31 (10) Local professional associations of persons described in
32 paragraphs (1) to (9), inclusive.

33 SEC. 10. Section 11166.8 of the Penal Code is amended and
34 renumbered to read:

35 11174.33. Subject to available funding, the Attorney General,
36 working with the California Consortium of Child Abuse Councils,
37 shall develop a protocol for the development and implementation
38 of interagency child death teams for use by counties, which shall
39 include relevant procedures for both urban and rural counties. The
40 protocol shall be designed to facilitate communication among

1 persons who perform autopsies and the various persons and
2 agencies involved in child abuse or neglect cases so that incidents
3 of child abuse or neglect are recognized and other siblings and
4 nonoffending family members receive the appropriate services in
5 cases where a child has expired. The protocol shall be completed
6 on or before January 1, 1991.

7 SEC. 11. Section 11166.9 of the Penal Code is amended and
8 renumbered to read:

9 11174.34. (a) (1) The purpose of this section shall be to
10 coordinate and integrate state and local efforts to address fatal
11 child abuse or neglect, and to create a body of information to
12 prevent child deaths.

13 (2) It is the intent of the Legislature that the California State
14 Child Death Review Council, the Department of Justice, the State
15 Department of Social Services, the State Department of Health
16 Services, and state and local child death review teams shall share
17 data and other information necessary from the Department of
18 Justice Child Abuse Central Index and Supplemental Homicide
19 File, the State Department of Health Services Vital Statistics and
20 the Department of Social Services Child Welfare Services/Case
21 Management System files to establish accurate information on the
22 nature and extent of child abuse or neglect related fatalities in
23 California as those documents relate to child fatality cases.
24 Further, it is the intent of the Legislature to ensure that records of
25 child abuse or neglect related fatalities are entered into the State
26 Department of Social Services, Child Welfare Services/Case
27 Management System. It is also the intent that training and technical
28 assistance be provided to child death review teams and
29 professionals in the child protection system regarding multiagency
30 case review.

31 (b) (1) It shall be the duty of the California State Child Death
32 Review Council to oversee the statewide coordination and
33 integration of state and local efforts to address fatal child abuse or
34 neglect and to create a body of information to prevent child deaths.
35 The Department of Justice, the State Department of Social
36 Services, the State Department of Health Services, the California
37 Coroner's Association, the County Welfare Directors Association,
38 Prevent Child Abuse California, the California Homicide
39 Investigators Association, the agency or agencies designated by
40 the Director of Finance pursuant to Section 13820, the

1 Inter-Agency Council on Child Abuse and Neglect/National
2 Center on Child Fatality Review, the California Conference of
3 Local Health Officers, the California Conference of Local
4 Directors of Maternal, Child, and Adolescent Health, the
5 California Conference of Local Health Department Nursing
6 Directors, the California District Attorneys Association, and at
7 least three regional representatives, chosen by the other members
8 of the council, working collaboratively for the purposes of this
9 section, shall be known as the California State Child Death Review
10 Council. The council shall select a chairperson or cochairpersons
11 from the members.

12 (2) The Department of Justice is hereby authorized to carry out
13 the purposes of this section by coordinating council activities and
14 working collaboratively with the agencies and organizations in
15 paragraph (1), and may consult with other representatives of other
16 agencies and private organizations, to help accomplish the purpose
17 of this section.

18 (c) Meetings of the agencies and organizations involved shall
19 be convened by a representative of the Department of Justice. All
20 meetings convened between the Department of Justice and any
21 organizations required to carry out the purpose of this section shall
22 take place in this state. There shall be a minimum of four meetings
23 per calendar year.

24 (d) To accomplish the purpose of this section, the Department
25 of Justice and agencies and organizations involved shall engage in
26 the following activities:

27 (1) Analyze and interpret state and local data on child death in
28 an annual report to be submitted to local child death review teams
29 with copies to the Governor and the Legislature, no later than July
30 1 each year. Copies of the report shall also be distributed to public
31 officials in the state who deal with child abuse issues and to those
32 agencies responsible for child death investigation in each county.
33 The report shall contain, but not be limited to, information
34 provided by state agencies and the county child death review teams
35 for the preceding year.

36 The state data shall include the Department of Justice Child
37 Abuse Central Index and Supplemental Homicide File, the State
38 Department of Health Services Vital Statistics, and the State
39 Department of Social Services Child Welfare Services/Case
40 Management System.

(2) In conjunction with the agency or agencies designated by the Director of Finance pursuant to Section 13820, coordinate statewide and local training for county death review teams and the members of the teams, including, but not limited to, training in the application of the interagency child death investigation protocols and procedures established under Sections 11166.7 and 11166.8 to identify child deaths associated with abuse or neglect.

(e) The State Department of Health Services, in collaboration with the California State Child Death Review Council, shall design, test and implement a statewide child abuse or neglect fatality tracking system incorporating information collected by local child death review teams. The department shall:

(1) Establish a minimum case selection criteria and review protocols of local child death review teams.

(2) Develop a standard child death review form with a minimum core set of data elements to be used by local child death review teams, and collect and analyze that data.

(3) Establish procedural safeguards in order to maintain appropriate confidentiality and integrity of the data.

(4) Conduct annual reviews to reconcile data reported to the State Department of Health Services Vital Statistics, Department of Justice Homicide Files and Child Abuse Central Index, and the State Department of Social Services Child Welfare Services/Case Management System data systems, with data provided from local child death review teams.

(5) Provide technical assistance to local child death review teams in implementing and maintaining the tracking system.

(6) This subdivision shall become operative on July 1, 2000, and shall be implemented only to the extent that funds are appropriated for its purposes in the Budget Act.

(f) Local child death review teams shall participate in a statewide child abuse or neglect fatalities monitoring system by:

(1) Meeting the minimum standard protocols set forth by the State Department of Health Services in collaboration with the California State Child Death Review Council.

(2) Using the standard data form to submit information on child abuse or neglect fatalities in a timely manner established by the State Department of Health Services.

(g) The California State Child Death Review Council shall monitor the implementation of the monitoring system and

1 incorporate the results and findings of the system and review into
2 an annual report.

3 (h) The Department of Justice shall direct the creation,
4 maintenance, updating, and distribution electronically and by
5 paper, of a statewide child death review team directory, which shall
6 contain the names of the members of the agencies and private
7 organizations participating under this section, and the members of
8 local child death review teams and local liaisons to those teams.
9 The department shall work in collaboration with members of the
10 California State Child Death Review Council to develop a
11 directory of professional experts, resources, and information from
12 relevant agencies and organizations and local child death review
13 teams, and to facilitate regional working relationships among
14 teams. The Department of Justice shall maintain and update these
15 directories annually.

16 (i) The agencies or private organizations participating under
17 this section shall participate without reimbursement from the state.
18 Costs incurred by participants for travel or per diem shall be borne
19 by the participant agency or organization. The participants shall be
20 responsible for collecting and compiling information to be
21 included in the annual report. The Department of Justice shall be
22 responsible for printing and distributing the annual report using
23 available funds and existing resources.

24 (j) The agency or agencies designated by the Director of
25 Finance pursuant to Section 13820, in coordination with the State
26 Department of Social Services, the Department of Justice, and the
27 California State Child Death Review Council shall contract with
28 state or nationally recognized organizations in the area of child
29 death review to conduct statewide training and technical assistance
30 for local child death review teams and relevant organizations,
31 develop standardized definitions for fatal child abuse or neglect,
32 develop protocols for the investigation of fatal child abuse or
33 neglect, and address relevant issues such as grief and mourning,
34 data collection, training for medical personnel in the identification
35 of child abuse or neglect fatalities, domestic violence fatality
36 review, and other related topics and programs. The provisions of
37 this subdivision shall only be implemented to the extent that the
38 agency or agencies designated by the Director of Finance pursuant
39 to Section 13820 can absorb the costs of implementation within its

1 current funding, or to the extent that funds are appropriated for its
2 purposes in the Budget Act.

3 (k) Law enforcement and child welfare agencies shall
4 cross-report all cases of child death suspected to be related to child
5 abuse or neglect whether or not the deceased child has any known
6 surviving siblings.

7 (l) County child welfare agencies shall create a record in the
8 Child Welfare Services/Case Management System (CWS/CMS)
9 on all cases of child death suspected to be related to child abuse or
10 neglect, whether or not the deceased child has any known
11 surviving siblings. Upon notification that the death was
12 determined not to be related to child abuse or neglect, the child
13 welfare agency shall enter that information into the Child Welfare
14 Services/Case Management System.

15 SEC. 12. Section 11166.95 of the Penal Code is amended and
16 renumbered to read:

17 11174.35. The State Department of Social Services shall work
18 with state and local child death review teams and child protective
19 services agencies in order to identify child death cases that were,
20 or should have been, reported to or by county child protective
21 services agencies. Findings made pursuant to this section shall be
22 used to determine the extent of child abuse or neglect fatalities
23 occurring in families known to child protective services agencies
24 and to define child welfare training needs for reporting,
25 cross-reporting, data integration, and involvement by child
26 protective services agencies in multiagency review in child deaths.
27 The State Department of Social Services, the State Department of
28 Health Services, and the Department of Justice shall develop a plan
29 to track and maintain data on child deaths from abuse or neglect,
30 and submit this plan, not later than December 1, 1997, to the Senate
31 Committee on Health and Human Services, the Assembly
32 Committee on Human Services, and the chairs of the fiscal
33 committees of the Legislature.

34 SEC. 13. Section 11167 of the Penal Code is amended to read:

35 11167. (a) ~~(4)~~—Reports of suspected child abuse or neglect
36 pursuant to Section 11166 shall include the name, business
37 address, and telephone number of the mandated reporter; the
38 capacity that makes the person a mandated reporter; the child's
39 name and ; the information that gave rise to the reasonable
40 suspicion of child abuse or neglect and the source or sources of that

information. If a report is made, the following information, if known, shall also be included in the report: the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her. However, a mandated reporter shall not make a report of child abuse or neglect if identifying information about the victim is not known to him or her.

~~(2) The reports required by Section 11166 shall be confidential and may be disclosed only as provided in this section. Any violation of the confidentiality provided by this article is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.~~

(b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or district attorney in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that

1 person's employer, except with the employee's consent or by court
2 order.

3 (e) Persons who may report pursuant to subdivision (e) of
4 Section 11166 are not required to include their names.

5 SEC. 14. Section 11167.5 of the Penal Code is amended to
6 read:

7 11167.5. (a) ~~A—The reports required by Sections 11166 and~~
8 ~~11166.2, and child abuse or neglect investigative report—reports~~
9 ~~that results result~~ in a summary report being filed with the
10 Department of Justice pursuant to subdivision (a) of Section 11169
11 shall be confidential and may be disclosed only as provided in
12 subdivision (b). Any violation of the confidentiality provided by
13 this article is a misdemeanor punishable by imprisonment in a
14 county jail not to exceed six months, by a fine of five hundred
15 dollars (\$500), or by both that imprisonment and fine.

16 (b) Reports of suspected child abuse or neglect and information
17 contained therein may be disclosed only to the following:

18 (1) Persons or agencies to whom disclosure of the identity of
19 the reporting party is permitted under Section 11167.

20 (2) Persons or agencies to whom disclosure of information is
21 permitted under subdivision (b) of Section 11170.

22 (3) Persons or agencies with whom investigations of child
23 abuse or neglect are coordinated under the regulations
24 promulgated under Section 11174.

25 (4) Multidisciplinary personnel teams as defined in subdivision
26 (d) of Section 18951 of the Welfare and Institutions Code.

27 (5) Persons or agencies responsible for the licensing of
28 facilities which care for children, as specified in Section 11165.7.

29 (6) The State Department of Social Services or any county
30 licensing agency which has contracted with the state, as specified
31 in paragraph (3) of subdivision (b) of Section 11170, when an
32 individual has applied for a community care license or child day
33 care license, or for employment in an out-of-home care facility, or
34 when a complaint alleges child abuse or neglect by an operator or
35 employee of an out-of-home care facility.

36 (7) Hospital scan teams. As used in this paragraph, "hospital
37 scan team" means a team of three or more persons established by
38 a hospital, or two or more hospitals in the same county, consisting
39 of health care professionals and representatives of law
40 enforcement and child protective services, the members of which

1 are engaged in the identification of child abuse or neglect. The
2 disclosure authorized by this section includes disclosure among all
3 hospital scan teams.

4 (8) Coroners and medical examiners when conducting a
5 postmortem examination of a child.

6 (9) The Board of Prison Terms, who may subpoena an
7 employee of a county welfare department who can provide
8 relevant evidence and reports that both (A) are not unfounded,
9 pursuant to Section 11165.12, and (B) concern only the current
10 incidents upon which parole revocation proceedings are pending
11 against a parolee charged with child abuse or neglect. The reports
12 and information shall be confidential pursuant to subdivision (d)
13 of Section 11167.

14 (10) Personnel from an agency responsible for making a
15 placement of a child pursuant to Section 361.3 of, and Article 7
16 (commencing with Section 305) of Chapter 2 of Part 1 of Division
17 2 of, the Welfare and Institutions Code.

18 (11) Persons who have been identified by the Department of
19 Justice as listed in the Child Abuse Central Index pursuant to
20 subdivision (c) of Section 11170, or persons who have verified
21 with the Department of Justice that they are listed in the Child
22 Abuse Central Index as provided in subdivision (e) of Section
23 11170. Disclosure under this paragraph is required
24 notwithstanding the California Public Records Act, Chapter 3.5
25 (commencing with Section 6250) of Division 7 of Title 1 of the
26 Government Code. Nothing in this paragraph shall preclude a
27 submitting agency prior to disclosure from redacting ~~the name,~~
28 ~~address, and telephone number of a witness, person who reports~~
29 ~~under this article, or victim in order~~ *any information necessary* to
30 maintain confidentiality as required by law.

31 (12) Out-of-state law enforcement agencies conducting an
32 investigation of child abuse or neglect only when an agency makes
33 the request for reports of suspected child abuse or neglect in
34 writing and on official letterhead, identifying the suspected abuser
35 or victim by name. The request shall be signed by the department
36 supervisor of the requesting law enforcement agency. The written
37 request shall cite the out-of-state statute or interstate compact
38 provision that requires that the information contained within these
39 reports is to be disclosed only to law enforcement, prosecutorial
40 entities, or multidisciplinary investigative teams, and shall cite the

1 criminal penalties for unlawful disclosure provided by the
2 requesting state or the applicable interstate compact provision. In
3 the absence of both (A) a specific out-of-state statute or interstate
4 compact provision that requires that the information contained
5 within these reports be disclosed only to law enforcement,
6 prosecutorial entities, or multidisciplinary investigative teams,
7 and (B) criminal penalties equivalent to the penalties in California
8 for unlawful disclosure, access shall be denied.

9 (13) Each chairperson of a county child death review team, or
10 his or her designee, to whom disclosure of information is permitted
11 under this article, relating to the death of one or more children and
12 any prior child abuse or neglect investigation reports maintained
13 involving the same victim, siblings, or suspects. Local child death
14 review teams may share any relevant information regarding case
15 reviews involving child death with other child death review teams.

16 (c) Authorized persons within county health departments shall
17 be permitted to receive copies of any reports made by health
18 practitioners, as defined in paragraphs (21) to (28), inclusive, of
19 subdivision (a) of Section 11165.7, and pursuant to Section
20 11165.13, and copies of assessments completed pursuant to
21 Sections 123600 and 123605 of the Health and Safety Code, to the
22 extent permitted by federal law. Any information received
23 pursuant to this subdivision is protected by subdivision (e).

24 (d) Nothing in this section requires the Department of Justice
25 to disclose information contained in records maintained under
26 Section 11169 or under the regulations promulgated pursuant to
27 Section 11174, except as otherwise provided in this article.

28 (e) This section shall not be interpreted to allow disclosure of
29 any reports or records relevant to the reports of child abuse or
30 neglect if the disclosure would be prohibited by any other
31 provisions of state or federal law applicable to the reports or
32 records relevant to the reports of child abuse or neglect.

33 SEC. 15. Section 11170 of the Penal Code is amended to read:

34 11170. (a) (1) The Department of Justice shall maintain an
35 index of all reports of child abuse and severe neglect submitted
36 pursuant to Section 11169. The index shall be continually updated
37 by the department and shall not contain any reports that are
38 determined to be unfounded. The department may adopt rules
39 governing recordkeeping and reporting pursuant to this article.



(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to ~~an agency that is specified in Section 11165.9 and a law enforcement agency, county welfare department, or county probation department~~ that is conducting a child abuse investigation relevant information contained in the index.

1 (4) The department shall make available to the State
2 Department of Social Services or to any county licensing agency
3 that has contracted with the state for the performance of licensing
4 duties information regarding a known or suspected child abuser
5 maintained pursuant to this section and subdivision (a) of Section
6 11169 concerning any person who is an applicant for licensure or
7 any adult who resides or is employed in the home of an applicant
8 for licensure or who is an applicant for employment in a position
9 having supervisory or disciplinary power over a child or children,
10 or who will provide 24-hour care for a child or children in a
11 residential home or facility, pursuant to Section 1522.1 or
12 1596.877 of the Health and Safety Code, or Section 8714, 8802,
13 8912, or 9000 of the Family Code.

14 (5) For purposes of child death review, the Department of
15 Justice shall make available to the chairperson, or the
16 chairperson's designee, for each county child death review team,
17 or the State Child Death Review Council, information maintained
18 in the Child Abuse Central Index pursuant to subdivision (a) of
19 Section 11170 relating to the death of one or more children and any
20 prior child abuse or neglect investigation reports maintained
21 involving the same victims, siblings, or suspects. Local child death
22 review teams may share any relevant information regarding case
23 reviews involving child death with other child death review teams.

24 (6) The department shall make available to investigative
25 agencies or probation officers, or court investigators acting
26 pursuant to Section 1513 of the Probate Code, responsible for
27 placing children or assessing the possible placement of children
28 pursuant to Article 6 (commencing with Section 300), Article 7
29 (commencing with Section 305), Article 10 (commencing with
30 Section 360), or Article 14 (commencing with Section 601) of
31 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
32 Code, Article 2 (commencing with Section 1510) or Article 3
33 (commencing with Section 1540) of Chapter 1 of Part 2 of
34 Division 4 of the Probate Code, information regarding a known or
35 suspected child abuser contained in the index concerning any adult
36 residing in the home where the child may be placed, when this
37 information is requested for purposes of ensuring that the
38 placement is in the best interests of the child. Upon receipt of
39 relevant information concerning child abuse or neglect
40 investigation reports contained in the index from the Department



1 of Justice pursuant to this subdivision, the agency or court
2 investigator shall notify, in writing, the person listed in the Child
3 Abuse Central Index that he or she is in the index. The notification
4 shall include the name of the reporting agency and the date of the
5 report.

6 (7) The Department of Justice shall make available to a
7 government agency conducting a background investigation
8 pursuant to Section 1031 of the Government Code of an applicant
9 seeking employment as a peace officer, as defined in Section 830,
10 information regarding a known or suspected child abuser
11 maintained pursuant to this section concerning the applicant.

12 (8) (A) Persons or agencies, as specified in subdivision (b), if
13 investigating a case of known or suspected child abuse or neglect,
14 or the State Department of Social Services or any county licensing
15 agency pursuant to paragraph (3), or an agency or court
16 investigator responsible for placing children or assessing the
17 possible placement of children pursuant to paragraph (5), or a
18 government agency conducting a background investigation of an
19 applicant seeking employment as a peace officer pursuant to
20 paragraph (7), to whom disclosure of any information maintained
21 pursuant to subdivision (a) is authorized, are responsible for
22 obtaining the original investigative report from the reporting
23 agency, and for drawing independent conclusions regarding the
24 quality of the evidence disclosed, and its sufficiency for making
25 decisions regarding investigation, prosecution, licensing,
26 placement of a child, or employment as a peace officer.

27 (B) If Child Abuse Central Index information is requested by
28 an agency for the temporary placement of a child in an emergency
29 situation pursuant to Article 7 (commencing with Section 305) of
30 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
31 Code, the department is exempt from the requirements of Section
32 1798.18 of the Civil Code if compliance would cause a delay in
33 providing an expedited response to the agency's inquiry and if
34 further delay in placement may be detrimental to the child.

35 (9) (A) Whenever information contained in the Department of
36 Justice files is furnished as the result of an application for
37 employment or licensing pursuant to paragraph (3), the
38 Department of Justice may charge the person or entity making the
39 request a fee. The fee shall not exceed the reasonable costs to the
40 department of providing the information. The only increase shall

1 be at a rate not to exceed the legislatively approved cost-of-living
2 adjustment for the department. In no case shall the fee exceed
3 fifteen dollars (\$15).

4 (B) All moneys received by the department pursuant to this
5 section to process trustline applications for purposes of Chapter
6 3.35 (commencing with Section 1596.60) of Division 2 of the
7 Health and Safety Code shall be deposited in a special account in
8 the General Fund that is hereby established and named the
9 Department of Justice Child Abuse Fund. Moneys in the fund shall
10 be available, upon appropriation by the Legislature, for
11 expenditure by the department to offset the costs incurred to
12 process trustline automated child abuse or neglect system checks
13 pursuant to this section.

14 (C) All moneys, other than that described in subparagraph (B),
15 received by the department pursuant to this paragraph shall be
16 deposited in a special account in the General Fund which is hereby
17 created and named the Department of Justice Sexual Habitual
18 Offender Fund. The funds shall be available, upon appropriation
19 by the Legislature, for expenditure by the department to offset the
20 costs incurred pursuant to Chapter 9.5 (commencing with Section
21 13885) and Chapter 10 (commencing with Section 13890) of Title
22 6 of Part 4, and the DNA and Forensic Identification Data Base and
23 Data Bank Act of 1998 (Chapter 6 (commencing with Section 295)
24 of Title 9 of Part 1), and for maintenance and improvements to the
25 statewide Sexual Habitual Offender Program and the DNA
26 offender identification file (CAL-DNA) authorized by Chapter
27 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the
28 DNA and Forensic Identification Data Base and Data Bank Act of
29 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part
30 1).

31 (c) The Department of Justice shall make available to any
32 agency responsible for placing children pursuant to Article 7
33 (commencing with Section 305) of Chapter 2 of Part 1 of Division
34 2 of the Welfare and Institutions Code, upon request, relevant
35 information concerning child abuse or neglect reports contained in
36 the index, when making a placement with a responsible relative
37 pursuant to Sections 281.5, 305, and 361.3 of the Welfare and
38 Institutions Code. Upon receipt of relevant information
39 concerning child abuse or neglect reports contained in the index
40 from the Department of Justice pursuant to this subdivision, the

1 agency shall also notify in writing the person listed in the Child
2 Abuse Central Index that he or she is in the index. The notification
3 shall include the location of the original investigative report and
4 the submitting agency. The notification shall be submitted to the
5 person listed at the same time that all other parties are notified of
6 the information, and no later than the actual judicial proceeding
7 that determines placement.

8 If Child Abuse Central Index information is requested by an
9 agency for the placement of a child with a responsible relative in
10 an emergency situation pursuant to Article 7 (commencing with
11 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
12 and Institutions Code, the department is exempt from the
13 requirements of Section 1798.18 of the Civil Code if compliance
14 would cause a delay in providing an expedited response to the child
15 protective agency's inquiry and if further delay in placement may
16 be detrimental to the child.

17 (d) The department shall make available any information
18 maintained pursuant to Section 11169 to out-of-state law
19 enforcement agencies conducting investigations of known or
20 suspected child abuse or neglect only when an agency makes the
21 request for information in writing and on official letterhead,
22 identifying the suspected abuser or victim by name. The request
23 shall be signed by the department supervisor of the requesting law
24 enforcement agency. The written requests shall cite the
25 out-of-state statute or interstate compact provision that requires
26 that the information contained within these reports shall be
27 disclosed only to law enforcement, prosecutorial entities, or
28 multidisciplinary investigative teams, and shall cite the criminal
29 penalties for unlawful disclosure of any confidential information
30 provided by the requesting state or the applicable interstate
31 compact provision. In the absence of a specified out-of-state
32 statute or interstate compact provision that requires that the
33 information contained within these reports shall be disclosed only
34 to law enforcement, prosecutorial entities, or multidisciplinary
35 investigative teams, and criminal penalties equivalent to the
36 penalties in California for unlawful disclosure, access shall be
37 denied.

38 (e) (1) Any person may determine if he or she is listed in the
39 Child Abuse Central Index by making a request in writing to the
40 Department of Justice. The request shall be notarized and include



1 the person's name, address, date of birth, and either a social
2 security number or a California identification number. Upon
3 receipt of a notarized request, the Department of Justice shall make
4 available to the requesting person information identifying the date
5 of the report and the submitting agency. The requesting person is
6 responsible for obtaining the investigative report from the
7 submitting agency pursuant to paragraph (11) of subdivision (b)
8 of Section 11167.5.

9 (2) No person or agency shall require or request another person
10 to furnish a copy of a record concerning himself or herself, or
11 notification that a record concerning himself or herself exists or
12 does not exist, pursuant to paragraph (1) of this subdivision.

13 (f) If a person is listed in the Child Abuse Central Index only
14 as a victim of child abuse or neglect, and that person is 18 years of
15 age or older, that person may have his or her name removed from
16 the index by making a written request to the Department of Justice.
17 The request shall be notarized and include the person's name,
18 address, social security number, and date of birth.

19 SEC. 16. Section 11170.5 of the Penal Code is amended to
20 read:

21 11170.5. (a) Notwithstanding paragraph (3) of subdivision
22 (b) of Section 11170, the Department of Justice shall make
23 available to a licensed adoption agency, as defined in Section 8530
24 of the Family Code, information regarding a known or suspected
25 child abuser maintained in the ~~child abuse index~~ *Child Abuse*
26 *Central Index*, pursuant to subdivision (a) of Section 11170,
27 concerning any person who has submitted to the agency an
28 application for adoption.

29 (b) A licensed adoption agency, to which disclosure of any
30 information pursuant to subdivision (a) is authorized, is
31 responsible for obtaining the original investigative report from the
32 reporting agency, and for drawing independent conclusions
33 regarding the quality of the evidence disclosed and the sufficiency
34 of the evidence for making decisions when evaluating an
35 application for adoption.

36 (c) Whenever information contained in the Department of
37 Justice files is furnished as the result of an application for adoption
38 pursuant to subdivision (a), the Department of Justice may charge
39 the agency making the request a fee. The fee shall not exceed the
40 reasonable costs to the department of providing the information.

1 The only increase shall be at a rate not to exceed the legislatively
2 approved cost-of-living adjustment for the department. In no case
3 shall the fee exceed fifteen dollars (\$15).

4 All moneys received by the department pursuant to this
5 subdivision shall be deposited in the Department of Justice Sexual
6 Habitual Offender Fund pursuant to paragraph (5) of subdivision
7 (b) of Section 11170.

8 SEC. 17. Section 11170.6 of the Penal Code is repealed.

9 SEC. 18. Section 11172 of the Penal Code is amended to read:

10 11172. (a) No mandated reporter shall be civilly or
11 criminally liable for any report required or authorized by this
12 article, and this immunity shall apply even if the mandated reporter
13 acquired the knowledge or reasonable suspicion of child abuse or
14 neglect outside of his or her professional capacity or outside the
15 scope of his or her employment. Any other person reporting a
16 known or suspected instance of child abuse or neglect shall not
17 incur civil or criminal liability as a result of any report authorized
18 by this article unless it can be proven that a false report was made
19 and the person knew that the report was false or was made with
20 reckless disregard of the truth or falsity of the report, and any
21 person who makes a report of child abuse or neglect known to be
22 false or with reckless disregard of the truth or falsity of the report
23 is liable for any damages caused. No person required to make a
24 report pursuant to this article, nor any person taking photographs
25 at his or her direction, shall incur any civil or criminal liability for
26 taking photographs of a suspected victim of child abuse or neglect,
27 or causing photographs to be taken of a suspected victim of child
28 abuse or neglect, without parental consent, or for disseminating
29 the photographs with the reports required by this article. However,
30 this section shall not be construed to grant immunity from this
31 liability with respect to any other use of the photographs.

32 (b) Any person, who, pursuant to a request from a government
33 agency investigating a report of suspected child abuse or neglect,
34 provides the requesting agency with access to the victim of a
35 known or suspected instance of child abuse or neglect shall not
36 incur civil or criminal liability as a result of providing that access.

37 (c) The Legislature finds that even though it has provided
38 immunity from liability to persons required or authorized to make
39 reports pursuant to this article, that immunity does not eliminate
40 the possibility that actions may be brought against those persons

1 based upon required or authorized reports. In order to further limit
2 the financial hardship that those persons may incur as a result of
3 fulfilling their legal responsibilities, it is necessary that they not be
4 unfairly burdened by legal fees incurred in defending those
5 actions. Therefore, a mandated reporter may present a claim to the
6 State Board of Control for reasonable attorney's fees and costs
7 incurred in any action against that person on the basis of making
8 a report required or authorized by this article if the court has
9 dismissed the action upon a demurrer or motion for summary
10 judgment made by that person, or if he or she prevails in the action.
11 The State Board of Control shall allow that claim if the
12 requirements of this subdivision are met, and the claim shall be
13 paid from an appropriation to be made for that purpose. Attorney's
14 fees awarded pursuant to this section shall not exceed an hourly
15 rate greater than the rate charged by the Attorney General of the
16 State of California at the time the award is made and shall not
17 exceed an aggregate amount of fifty thousand dollars (\$50,000).

18 This subdivision shall not apply if a public entity has provided
19 for the defense of the action pursuant to Section 995 of the
20 Government Code.

21 (d) A court may award attorney's fees and costs to a
22 commercial film and photographic print processor when a suit is
23 brought against the processor because of a disclosure mandated by
24 this article and the court finds this suit to be frivolous.

25 SEC. 19. An article heading is added immediately preceding
26 Section 11174.32 of *Chapter 2* of Title 1 of Part 4 of the Penal
27 Code, to read:

28

29 Article 2.6. Child Death Review Teams

30

31 SEC. 20. Section 11174.4 of the Penal Code, as added by
32 Chapter 1064 of the Statutes of 2002, is amended and renumbered
33 to read:

34 11174.31. (a) There is hereby created the Child Abuse and
35 Neglect Reporting Act Task Force for the purpose of reviewing the
36 act and addressing the following:

37 (1) The value of the Child Abuse Central Index in protecting
38 children.



(2) Changes needed with respect to the Child Abuse and Neglect Reporting Act, including but not limited to, the operation of the Child Abuse Central Index.

(b) The task force shall be chaired by a designee of the Attorney General.

(c) The members of the task force shall serve at the pleasure of their respective appointing authority, without compensation, except for reimbursement of necessary expenses. The task force shall be composed of the following representatives:

(1) One representative of the Department of Justice, in addition to the chairperson.

(2) One representative of the State Department of Social Services.

(3) One representative of the County Welfare Directors' Association.

(4) One representative of the California State Child Death Review Council.

(5) Two representatives of local law enforcement, one selected by the California State Sheriffs' Association and one selected by the California Police Chiefs' Association.

(6) One representative of the Judicial Council.

(7) Two representatives of the State Bar of California, one of whom practices criminal defense and one of whom represents children in criminal and civil proceedings.

(8) Two representatives of recognized organizations involved in privacy advocacy, civil liberties advocacy, or legal aid, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Senate Committee on Rules.

(9) Two members of the public, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Senate Committee on Rules.

(10) Two representatives appointed by the Governor.

(d) The Department of Justice shall provide staff and support for the task force.

(e) The task force shall meet at least once every two months. Subcommittees may be formed and meet as necessary. All meetings shall be open to the public.

(f) On or before January 1, 2004, the task force shall report its findings and recommendations to the Governor, the Attorney General, the Speaker of the Assembly, and the Senate Committee

1 on Rules. At the request of any member, the report may include
2 minority findings and recommendations.

3 (g) This section shall become inoperative on March 1, 2004,
4 and is repealed as of January 1, 2005, unless a later enacted statute,
5 that becomes operative before January 1, 2005, deletes or extends
6 that date.

7 SEC. 21. Section 16513 of the Welfare and Institutions Code
8 is amended to read:

9 16513. Anyone participating in good faith in the making of a
10 report pursuant to this chapter shall have immunity from any
11 liability, civil or criminal, that might otherwise be incurred or
12 imposed. Any such participant shall have the same immunity with
13 respect to participation in any judicial proceeding resulting from
14 ~~such~~ *the* report.

